

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of : **Confirmation No. 3722**
Helmut FITZ : Attorney Docket No. 2004_0121A
Serial No.10/766,478 : Group Art Unit 3637
Filed January 29, 2004 : Examiner Hanh Van Tran
DRAWER

THE COMMISSIONER IS AUTHORIZED
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ACCOUNT NO. 23-0975

APPEAL BRIEF FILED UNDER 37 CFR § 41.37

Assistant Commissioner for Patents,

Sir:

The following is the Appellant's Brief, submitted in accordance with the provisions of 37 CFR 41.37.

Real Party in Interest

The real party in interest is Julius Blum Gesellschaft mbH, the assignee of the present application.

Related Appeals and Interferences

There are no known related appeals, interferences, or judicial proceedings.

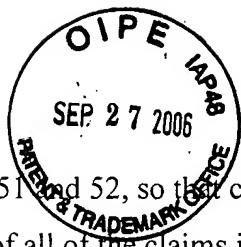
Status of Claims

Claims 27-52 were submitted in an Amendment filed March 27, 2006, and those claims are currently pending. In a final Office Action dated June 15, 2006, the Examiner rejected claims 27-34 and 40-50 in view of the prior art, and rejected dependent claim 35 on formal grounds. The Examiner also indicated that dependent claims 36-39 contain allowable subject matter, and

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allowed claims 51 and 52, so that claims 36-39, 51, and 52 are not involved in this appeal. A complete copy of all of the claims involved in this appeal is provided in the attached Claims Appendix.

Status of Amendments

No amendments subsequent to the final Office Action of June 15, 2006 have been submitted.

Summary of the Claimed Subject Matter

A description of the subject matter recited in the rejected claims will be provided below with reference to the written description and drawings of this Application. In this regard, the cited portions of the written description refer to the substitute specification filed March 27, 2006.

The present invention is generally directed to a drawer for use in a corner of, for example, a set kitchen cabinets, as illustrated in Figure 1 (see page 1, lines 5-7 of the substitute specification). In particular, as illustrated in Figures 3 and 4, the drawer 1 comprises two drawer frame members 2,2, a rear wall 5 attached to the drawer frame members 2,2, and a drawer bottom 3 between the drawer frame members 2,2 (see page 2, lines 18-24 of the specification).

The drawer also comprises a front facing panel 4 adjustably attached to the drawer frame members 2,2 (see page 2, lines 25-32 of the specification). The front facing panel 4 includes at least two panel portions 7,7 adjustable relative to one another and arranged so that the front facing panel is angled inwardly (see page 3, lines 17-25 of the specification). Because the panel portions 7,7 are adjustable relative to one another, horizontal gaps between the drawers 1 can be precisely adjusted (see page 3, lines 21-22 and Figure 1). Therefore, jamming of the panel portion by front plates of adjacent drawers when the corner drawer is pulled outward can be prevented.

The panel portions are connected together by a fitment 9, and the fitment 9 can include three metal angle portions 11,12,13 connected together by fasteners such as screws 14 and nuts 15 (see page 2, line 30 through page 3, line 4 and Figures 10 and 11). A first angle portion 11 has vertical slots 18, a second angle portion has horizontal slots 24 and vertical slots 23, and a

third angle portion 13 has horizontal slots 25 and round holes 26 (see page 3, lines 5-16). Thus, the fitment 9 can be adjusted so as to adjust the panel portions 7,7 relative to each other.

Grounds of Rejection to be Reviewed on Appeal

Claims 27-34 and 40-50 stand rejected as being unpatentable under 35 USC 103(a) over GB 2,169,492 (the “Bladen reference”) in view of U.S. Patent No. 4,433,995 (the “Baker reference”) and U.S. Patent No. 4,090,753 (the “Rock reference”). The Examiner also rejected claim 35 under 35 USC 112, second paragraph, as being indefinite.

Argument

Claims 27-34 and 40-50 are Patentable Over the Prior Art

Independent claim 27 is directed to a drawer that comprises two drawer frame members, a rear wall, a drawer bottom, and a front facing panel adjustably attached to the drawer frame members. The front facing panel includes at least two panel portions *adjustable relative to one another* and arranged so that the front facing panel is angled inwardly. Because the front facing panel includes at least two panel portions that are *adjustable relative to one another*, the horizontal gaps between adjacent drawers can be precisely adjusted as desired.

The Bladen reference discloses a corner unit and a drawer for the corner unit, and the drawer includes an outer edge (i.e., facing panel) 25. However, the outer edge 25 has a one-piece construction. In the final Office Action, the Examiner acknowledged that the Bladen reference “does not clearly disclose the facing panel being formed by at least two members which are adjustably connected together.” Thus, the Bladen reference does not teach or suggest at least two panel portions adjustable relative to one another.

The Baker reference discloses a lazy susan assembly that includes two door panels 22a and 22b mounted to edges of a shelf 26 of a lazy susan 24 (see column 3, line 61 through column 4, line 4). In the final Office Action, the Examiner first asserted that the panels 22a, 22b are “adjustably connected together” (see item 7 on page 3), and then responded to the Applicant’s previous arguments by asserting that the door panels 22a and 22b are “adjustable relative to another via with respect to the cabinet” (see last line of item 11 on page 5). To the extent that the

Examiner is taking the position that the panels 22a,22b are adjustable relative to one another, the Applicant strongly disagrees. In this regard, the Applicant notes that column 4, lines 28-35 simply explains that a rotary catch mechanism 40 serves as a means for “aligning the rotary position of the door panels 22a and 22b *with respect to the cabinet 10*” (emphasis added). However, it is noted that arranging two components so that those two components are adjustable relative to a third component (the cabinet), does not at all suggest arranging the two components in such a way that they are adjustable *relative to one another*. Therefore, it is submitted that the Baker reference does not disclose or even suggest a front facing panel including at least two panel portions *adjustable relative to one another*.

The Rock reference discloses a fastening device including a retaining part 4 and a support part 5. These components are used to adjust the position of a one-piece front panel 14 to a bottom board 1 of a drawer (see Figure 6; and column 2, line 65 through column 3, line 8). Thus, the Rock reference simply teaches the very general idea of attaching a one-piece front panel to a drawer in an adjustable manner. However, the Rock reference does not disclose or even suggest a front facing panel including at least two panel portions *adjustable relative to one another*.

Although knowledge generally available to one of ordinary skill in the art can be used in attempting to identify a teaching, suggestion, or motivation to modify or combine references to obtain a claimed invention, it is also well established that the question of motivation cannot be resolved on subjective belief and unknown authority. See *In re Sang Su Lee*, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002). Furthermore, when attempting to determine whether one of ordinary skill in the art would be motivated by the references to obtain the claimed invention, it is improper to simply use “that which the inventor taught against its teacher.” *W.L. Gore v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983). The determination must be made on objective evidence of record, without any hindsight analysis. See *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999)(“Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.”).

As explained above, the Bladen reference, the Baker reference, and the Rock reference do not, either alone or in combination, disclose or even suggest a front facing panel of a drawer in which the front facing panel includes at least two panel portions *adjustable relative to one another*. Furthermore, the Examiner has not provided any objective evidence as to why one of ordinary skill in the art would be motivated to obtain the present invention (including at least two front panel portions *adjustable relative to one another*) from references that teach, at best, the idea of attaching a front panel to a drawer so that the front panel is adjustable relative to a cabinet body. Thus, the Examiner's reasoning for such a combination appears to be based only on the teachings set forth in the present application - i.e., improper hindsight. In contrast to the Examiner's position, it is respectfully submitted that one of ordinary skill in the art would not be motivated to modify or combine the applied references so as to obtain the invention recited in independent claim 27. Thus, it is submitted that claim 27 and the claims that depend therefrom are clearly patentable over the prior art of record.

Claim 35 is not Indefinite Under Section 112

The Examiner rejected dependent claim 35 as being indefinite, presumably because the Examiner believes that the subject matter of dependent claim 35 conflicts with the subject matter of base dependent claim 34. In this regard, the Examiner asserted that because base claim 34 recites "*just* two angle portions, the recitation in claim 35 of a total of three angle portions renders the claimed [sic] indefinite" (emphasis added). However, because the Examiner is apparently misreading claim 34, it is submitted that this formal rejection is improper.

Dependent claim 34 presently reads "said fitment includes *at least* two angle portions screwed to each other" (emphasis added). Thus, claim 34 is not limited to only, or "just", two angle portions. Instead, the ordinary meaning of claim 34 is broad enough to cover embodiments with two angle portions, three angle portions, or twenty-two angle portions. As a result, it is submitted that claim 35, which depends from claim 34 and describes three angle portions, does not conflict with the subject matter of claim 34. Consequently, it is submitted that claim 35 is not indefinite.

MPEP Chapter 2143.03 states that even indefinite limitations cannot be disregarded, and *must* be considered upon determining the patentability of a claim over the prior art. In the final Office Action, the Examiner merely rejected claim 35 as being indefinite, but did not set forth any prior art rejections against the claim. Therefore, in view of the clear guidelines set forth in MPEP Chapter 2143.03, it is the Applicant's understanding that the Examiner properly considered claim 35 in view of the prior art, but determined that claim 35 is distinguishable from the prior art. Consequently, in view of the fact that claim 35 is not indefinite as explained above, it is the Applicant's further understanding that claim 35 would be allowable if rewritten in independent form to include the subject matter of base independent claim 27 and intervening claims 33 and 34.

Conclusion

As noted above, the combination of the Bladen reference, the Baker reference, and the Rock reference does not disclose or even suggest all of the features recited in independent claim 27. Moreover, dependent claim 35 is not indefinite. Thus, it is respectfully submitted that independent claim 27 is clearly patentable over the prior art of record, and the Board of Appeals is respectfully requested to reverse the Examiner's prior art and formal rejections set forth in the final Office Action of June 15, 2006.

Respectfully submitted,

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CLAIMS APPENDIX - Claims on Appeal (Appeal - Application Serial No. 10/766,478)

27. A drawer comprising:
two drawer frame members;
a rear wall attached to said drawer frame members;
a drawer bottom between said drawer frame members; and
a front facing panel adjustably attached to said drawer frame members, said front facing panel including at least two panel portions adjustable relative to one another and arranged so that said front facing panel is angled inwardly.

28. The drawer of claim 27, wherein said front facing panel is angled inwardly such that said panel portions form a right angle to each other.

29. The drawer of claim 27, wherein said panel portions are adjustable in the horizontal direction relative to said drawer frame members.

30. The drawer of claim 27, wherein said panel portions are adjustable in the horizontal direction relative to each other.

31. The drawer of claim 27, wherein said panel portions are adjustable in the vertical direction relative to said drawer frame members.

32. The drawer of claim 27, wherein said panel portions are adjustable in the vertical direction relative to each other.

33. The drawer of claim 27, wherein said panel portions are connected together by a fitment.

34. The drawer of claim 33, wherein said fitment includes at least two angle portions screwed to each other.

35. The drawer of claim 34, wherein a first one of said angle portions has vertical slots, a second one of said angle portions has horizontal and vertical slots, and a third one of said angle portions has horizontal slots and round holes.

40. The drawer of claim 27, further comprising holding members mounted to said panel portions and coupled to spring-loaded arresting members in said drawer frame members.

41. The drawer of claim 40, wherein said holding members are fixed to triangular-shaped adaptor portions screwed directly to said panel portions.

42. The drawer of claim 27, further comprising an inwardly-angled front base panel having openings, and holding members fixed to said front facing panel project through said openings so as to attach said front facing panel to said front base panel.

43. The drawer of claim 42, wherein said holding members are coupled to anchor members fitted to said front base panel.

44. The drawer of claim 43, wherein said holding members are screwed to said anchor members.

45. The drawer of claim 44, wherein said anchor members have holes through which fixing screws project, wherein said fixing screws are adjustable within said holes in the radial direction.

46. The drawer of claim 27, wherein said rear wall is angled outwardly from said front facing panel.

47. The drawer of claim 46, wherein said rear wall includes two rear panel portions connected together.

48. The drawer of claim 47, wherein said rear panel portions form a right angle to each other.

49. The drawer of claim 47, wherein said rear panel portions are fixed to said drawer frame members by separate holding members.

50. The drawer of claim 46, wherein said rear wall is fixed to said drawer frame members by separate holding members.

EVIDENCE APPENDIX (Appeal - Application Serial No. 10/766,478)

No evidence has been submitted and relied upon by the Appellant.

RELATED PROCEEDINGS APPENDIX (Appeal - Application Serial No. 10/766,478)

As noted above, there are no known related appeals, interferences, or judicial proceedings.



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Sir:

Attached hereto is a check in the amount of \$500.00 to cover Patent Office fees relating to filing the following attached papers:

Appeal Brief \$500.00

A duplicate copy of this paper is being submitted for use in the Accounting Division, Office of Finance.

The Commissioner is authorized to charge any deficiency or to credit any overpayment associated with this communication to Deposit Account No. 23-0975, with the EXCEPTION of deficiencies in fees for multiple dependent claims in new applications.

Respectfully submitted,

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